

STATE OF HAWAII

HAWAII LABOR RELATIONS BOARD

In the Matter of)	CASE NO. CU-10-155
STEVEN McGUINE,)	ORDER NO. 1738
Complainant,)	ORDER DISMISSING PROHIBITED
and)	PRACTICE COMPLAINT
UNITED PUBLIC WORKERS, AFSCME,)	
LOCAL 646, AFL-CIO,)	
Respondent.)	

ORDER DISMISSING PROHIBITED PRACTICE COMPLAINT

On April 26, 1999, Complainant STEVEN McGUINE (McGUINE) filed a prohibited practice complaint against the UNITED PUBLIC WORKERS, AFSCME, LOCAL 646, AFL-CIO (UPW or Union) with the Hawaii Labor Relations Board (Board). Complainant alleged that he was suspended for 20 days and dismissed from the Oahu Community Correctional Center (OCCC) effective November 2, 1998. Complainant further alleged that on November 2, 1998, the UPW filed a grievance on his behalf and on February 5, 1999, McGUINE received a notice from UPW State Director Gary Rodrigues that the Union decided not to submit his grievance to arbitration. Complainant cited violations of §§ 89-13 and 89-13(5).

On April 29, 1999, the UPW, by and through its counsel, filed a motion for particularization with the Board. After considering the arguments presented, the Board issued Order No. 1718 on May 7, 1999, granting, in part, and denying, in part, Respondent's motion for particularization. The Board ordered

Complainant to file a particularization of his complaint specifying which contract provisions he alleged were violated within five working days after the service of the Order. The Board notified Complainant that it would dismiss his complaint if he failed to timely file and serve the particularization.¹

According to the record in this case, the Board finds that Complainant failed to file a particularization of the complaint as directed.

Thereafter, on May 28, 1999 the UPW filed an answer and a motion to dismiss the complaint for failure to state a claim for relief and/or for summary judgment with the Board. The UPW alleged that McGUINE was discharged for a serious violation of the employer's standards of conduct which is supported by a well-documented investigative report, consisting, inter alia, of admissions of careless conduct by McGUINE. The UPW contended that the decision not to arbitrate McGUINE's grievance was based upon

¹Administrative Rules § 12-42-45(b) provides, in part:

If the charge is believed by a respondent to be so vague and indefinite that the respondent cannot reasonably be required to frame an answer thereto, such respondent may, within five days after service of the complaint, file with the board a motion for particularization of the complaint, requesting that the complainant file a statement supplying specific information. If the board grants such motion, the complainant shall file with the board the original and five copies of the requested particularization, with certificate of service on all parties, within five days after service of the board's granting order, unless the board directs otherwise. If the complainant fails to timely file and serve the particularization, the board shall dismiss the complaint.

the judgment of the UPW State Director who investigated the matter and determined that the grievance lacked merit. The UPW attached pertinent grievance documents and the investigative report relied upon by the employer. The UPW contended that there is no legal basis to support a claim for a breach of the duty of fair representation and that the complaint should be dismissed and/or summary judgment should be entered in favor of the UPW.

After reviewing the record, the Board finds that Complainant also failed to respond to the UPW's motion to dismiss and/or for summary judgment in accordance with Administrative Rules § 12-42-8(g)(3)(iii).²

On June 21, 1999, the Board issued a Notice of Intent to Dismiss Case for Lack of Prosecution. The Board notified the parties that the Board would dismiss the instant complaint because of Complainant's lack of prosecution unless it received written notification within ten days stating the reasons why this case should not be dismissed.

Thereafter, on June 22, 1999, the UPW filed a Supplemental Memorandum in Support of Motion to Dismiss with the Board. The UPW contends that the Board has no discretion but to dismiss the instant complaint because Complainant violated the Board's rules.

²Administrative Rules § 12-42-8(g)(3)(iii) provides:

Answering affidavits, if any, shall be served on all parties and the original and five copies, with certificate of service on all parties, shall be filed with the board within five days after service of the motion papers, unless the board directs otherwise.

After reviewing the entire record in this case, the Board finds that Complainant failed to respond to the Board's notice, dated June 21, 1999. Thus, considering the UPW's arguments and the Complainant's failure to respond to the Board's orders and notices in compliance with the Board's Administrative Rules, the Board hereby dismisses the instant prohibited practice complaint because of Complainant's failure to prosecute his case.

DATED: Honolulu, Hawaii, July 7, 1999.

HAWAII LABOR RELATIONS BOARD


BERT M. TOMASU, Chairperson


RUSSELL T. HIGA, Board Member


CHESTER C. KUNITAKE, Board Member

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